

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|------------------------------|---|--------------|
| TRACY R. FARRELL | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| COUNTY OF MONTGOMERY, et al. | : | NO. 05-3593 |

Baylson, J.

January 18, 2006

MEMORANDUM

Plaintiffs Tracy R. Farrell and Kenneth Farrell bring this suit against multiple Defendants, including Montgomery County, prison wardens and various correctional officers of the Montgomery County Prison, as well as prison health care service providers and their employees, alleging violations of the Fourth and Fourteenth Amendments (Count I), violation of the Eighth Amendment (Count II), violations of the Pennsylvania Constitution (Count III), negligence (Count IV), and wrongful death (Count V). The Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the case involves causes of action arising under federal law. The Court also has supplemental jurisdiction of all state law claims and venue is appropriate under 28 U.S.C. § 1391.

Presently before the court are Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendant Montgomery County Emergency Service, Inc. (Doc. No. 19) and Defendants Correctional Medical Care, Inc., Stacey Miles, and Barbara Dedonato (Doc. No. 29) (collectively, “Defendants”) filed on October 11 and November 15, 2001, respectively. The Plaintiffs responded to these Motions with identical documents filed on October 25th and

November 21st (Docs. No. 24 and 33). Because the Defendants set forth almost identical bases for their 12(b)(6) motions, the Court will consider both simultaneously.

I. Background

This case stems from the death of Adam K. Moore (“Moore” or “the decedent”), a forty-two year old prisoner who committed suicide while in state custody in the Montgomery County Prison. On May 4, 2004, less than ten hours before a preliminary hearing in his case, Moore was found hanging by his neck in his jail cell. Moore was subsequently taken to a nearby hospital where he was pronounced dead. Tracy and Kenneth Farrell, as administrators of Moore’s estate, have filed suit. They filed a five-count amended complaint on September 12, 2005 alleging that Defendants failed to properly monitor and care for decedent while he was in custody at the prison.

According to the amended complaint in this case, Correctional Medical Care, Inc. is a corporation which at all material times was under contract with Montgomery County to provide medical and/or mental health services to pre-trial detainees and prisoners at the facility. Montgomery County Emergency Service, Inc. was subcontractor of Correctional Medical Care, Inc. and acted as its agent under its direction. Defendants Miles and DeDonato were nurses at Montgomery County Prison employed by either Montgomery County, Correctional Medical Care, Inc., or Montgomery County Emergency Service, Inc. and were responsible, among other tasks, for assessing and evaluating the physical and mental conditions of detainees, including decedent.

II. Parties' Contentions

A. Defendants' Motions

Defendants make two main arguments in the Motion to Dismiss. First, they argue that claims for punitive damages should be stricken from the amended complaint, since there is no indication in the document that any of the moving Defendants ever intended to harm the decedent. Citing the Restatement (Second) of Torts as well as a litany of state and federal cases, Defendants argue that punitive damages are used to punish rare instances of extreme behavior and the violations alleged in the complaint do not reach this level. They contend that conduct that gives rise to punitive damages must be willful or malicious and that the Plaintiffs in this case have asserted primarily negligence claims in their amended complaint. Moreover, Defendants argue that the burden is even higher for plaintiffs seeking to claim punitive damages under a theory of vicarious liability, a burden which Plaintiffs are unable to meet.

The second argument put forth by Defendants is that the state constitutional claim should be dismissed since the Pennsylvania Constitution does not confer a private right of action to an individual seeking to recover damages. Defendants cite recent case law from the Eastern District of Pennsylvania in support of their position and argue that Count III of the amended complaint must be dismissed because it seeks money damages for violations of the state constitution.

B. Plaintiffs' Responses

Plaintiffs respond to Defendants' punitive damages arguments by noting that courts have generally been reluctant to strike punitive damages at the 12(b)(6) stage. Plaintiffs assert that only through discovery can they clarify the details of the events in the prison and thus determine which employees were present at the time of Moore's incarceration and suicide. It is also unclear

at this point who saw the purported will and suicide note of the decedent and whether ignoring such documents amounted to malicious or even willful acts on the part of the prison employees and/or contractors. See Pl's Resp. at 4.

As for the private right of action issue, Plaintiffs acknowledge that recent district court cases hold that there is no such right of action under the Pennsylvania Constitution. Despite this recent case law, Plaintiffs note that the Supreme Court of Pennsylvania has not yet decided the issue and then cite what they claim to be the most recent state court decision on the matter. Plaintiffs also attempt to distinguish the district court cases cited by Defendants arguing that none of them involved personal injuries or death.

III. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

IV. Discussion

A. Punitive Damages

Though Defendants contend that conduct is only sufficient to warrant punitive damages where “a defendant knows, or has reason to know, of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act in conscious disregard of, or indifference to that risk.” PolSELLI v. Nationwide Mutual Fire Insurance Co., 23 F.3d 747, 751

(3d Cir. 1994). Defendants argue that their alleged failure to interpret a writing by the decedent while in prison as a suicide note does not amount to the state of mind required to obtain punitive damages. While Defendants may very well be correct, no discovery has as of yet been conducted in this case. As Plaintiffs note in their response, given the nature of the claims alleged in this case, it is impossible for them to know exactly what transpired in the prison prior to decedent's suicide. Viewing all well-pleaded allegations in the complaint in the light most favorable to the Plaintiffs, the Court at this juncture will deny Defendants' motion to dismiss the claims for punitive damages.

B. State Constitutional Claim

In their Motions to Dismiss Defendants cite three cases from the Eastern District of Pennsylvania in support of their contention that there is no private right of action for a violation of the Pennsylvania Constitution. See Pollarine v. Boyer, 2005 WL 1806481, at *2 (E.D. Pa. July 29, 2005); Morris v. Dixon, 2005 WL 950615, at **12–14 (E.D. Pa. Apr. 20, 2005); Kaucher v. County of Bucks, 2005 WL 283628, at *11 (E.D. Pa. Feb. 7, 2005). Just as in Pollarine, Morris, and Kaucher, Plaintiffs in this case seek damages for violation of the Pennsylvania Constitution. See Amended Complaint at ¶¶ 100–102.

Pennsylvania has no statutory equivalent to 42 U.S.C. § 1983, which provides a private cause of action for a federal constitutional violation. Morris, 2005 WL 950615, at *43; Kaucher, 2005 WL 283628, at *31. Although there is some support for an action seeking injunctive relief to enforce the equal rights provisions of the Pennsylvania Constitution, “there has been no such holding as to an action for damages.” Kaucher, 2005 WL 283628, at *31.

Though the Kaucher case does acknowledge that a private right of action for damages

under the Pennsylvania Constitution is not a “fully settled” issue, 2005 WL 283628, at *31, Plaintiff’s response on this matter does little to rebut Defendants’ arguments for dismissal of the claim.¹ Though the case cited by Plaintiffs does appear to allow a private right of action for damages under the Pennsylvania Constitution, it is a Court of Common Pleas case, and in the absence of such a holding from the Supreme Court of Pennsylvania, the Court finds the reasoning in Pollarine, Morris, and Kaucher persuasive on the matter.²

Plaintiffs also contend that the decisions cited by the Defendants in their motion to dismiss involved personal injuries or death and that they are therefore inapplicable to the facts of this case. Despite Plaintiffs’ assertions, a quick look at just one of the 2005 cases, Pollarine, indicates that the case did in fact involve some type of physical contact, as the plaintiff filed an assault and battery charge against the police relating to the use of force in removing him from his

¹ Plaintiffs contend that the most recent Pennsylvania decision on the matter, Jones v. City of Philadelphia, 2004 WL 3523514 (Pa. Ct. of Comm. Pleas 2004), provided that a “municipality cannot be immune from damages for physical injuries it causes by violating the Pennsylvania Constitution.” Id. at *1.

² A footnote in Morris summarizes the numerous cases from this Court holding that the Pennsylvania Constitution does not provide a private right of action for damages:

The court in Ryan v. General Machine Products, 277 F. Supp. 2d 585, 595 (E.D. Pa. 2003) found that “the Supreme Court of Pennsylvania has not ruled on the issue of whether there is a private cause of action for damages under the state constitution, and the federal courts in this Circuit that have considered the issue have concluded that there is no such right under the Pennsylvania Constitution.” See also, Douris v. Schweiker, 229 F. Supp. 2d 391, 405 (E.D. Pa. 2002) (citing Kelleher v. City of Reading, 2001 WL 1132401, at **2–3 (E.D. Pa. Sept. 24, 2001) (citing Dooley v. City of Philadelphia, 153 F. Supp. 2d 628, 663 (E.D. Pa. 2001)); Sabatini v. Reinstein, 1999 WL 636667, at *3 (E.D. Pa. Aug. 20, 1999); Holder v. City of Allentown, 1994 WL 236546, *3 (E.D. Pa. May 19, 1994); Lees v. West Greene Sch. Dist., 632 F. Supp. 1327, 1335 (W.D. Pa. 1986); Pendrell v. Chatham Coll., 386 F. Supp. 341, 344 (W.D. Pa. 1974).

Morris, 2005 WL 950615, at *44 n.20.

home. 2005 WL 1806481, at **1–2, *5. Moreover, whether the state constitution contains a private right of action would not seem to depend on the specific type of action pursued but whether the document itself provides for claims for money damages.

Notwithstanding the specific facts of the instant case, Plaintiffs are seeking damages for violation of the Pennsylvania Constitution and their claim falls squarely within the persuasive reasoning of Pollarine, Morris, and Kaucher. Therefore, Plaintiffs’ state constitutional claim fails as a matter of law, and Count III of the amended complaint will be dismissed with prejudice.

The undersigned does not believe district court judges should create a private right of action until and unless a legislative body has clearly allowed it, or an appellate court has issued a holding to that effect.

V. Conclusion

For the reasons stated above, Defendants’ Motions to Dismiss will be granted with prejudice as to Count III and denied as to the claims for punitive damages.

An appropriate Order follows.

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ORDER

AND NOW, this 18th day of January, 2006, it is hereby ORDERED that Defendants' Motions to Dismiss (Docs. No. 19 and 29) are GRANTED IN PART and DENIED IN PART. The motions are DENIED as to the punitive damages claims. The motions are GRANTED as to the alleged violations of the Pennsylvania Constitution, and Count III is dismissed with prejudice.

BY THE COURT:

s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.